No. 19-1540

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DONALD J. TRUMP, ERIC TRUMP, IVANKA TRUMP, DONALD J. TRUMP, JR., DONALD J. TRUMP REVOCABLE TRUST, TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER LLC, TRUMP ACQUISITION LLC, and TRUMP ACQUISITION, CORP.,

Plaintiffs-Appellants,

v.

DEUTSCHE BANK AG, and CAPITAL ONE FINANCIAL CORPORATION,

Defendants-Appellees,

and

COMMITTEE ON FINANCIAL SERVICES OF THE U.S. HOUSE OF REPRESENTATIVES, and PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE U.S. HOUSE OF REPRESENTATIVES,

Intervenor Defendants-Appellees.

On Appeal from the U.S. District Court for the Southern District of New York

BRIEF FOR THE COMMITTEE ON FINANCIAL SERVICES AND PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE U.S. HOUSE OF REPRESENTATIVES

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INTRODUCTION

Congress's power to conduct oversight and investigations is firmly rooted in its Article I legislative authority and the constitutional separation of powers. This "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Congress's power to investigate is inherent in the power to legislate because "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *Id.* at 175. "That power is broad." *Watkins v. United States*, 354 U.S. 178, 187 (1957). Applying this precedent, the district court explained that "there can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power . . . is indeed co-extensive with the power to legislate." JA126.

Intervenors the Committee on Financial Services of the U.S. House of Representatives (Financial Services Committee) and Permanent Select Committee on Intelligence of the U.S. House of Representatives (Intelligence Committee) (collectively, Committees) are investigating serious and urgent matters concerning the safety of certain banking practices, money laundering in the financial sector, foreign influence in the U.S. political process, and the counterintelligence threats posed by foreign financial leverage. These investigations relate to plaintiff-appellant President Donald J. Trump, but they are sector-wide and extend far beyond Mr. Trump, his

family, and his businesses.[1] The Committees each issued a subpoena to defendant Deutsche Bank, AG, and the Financial Services Committee issued a subpoena to defendant Capital One Financial Corporation seeking financial and account records relating to Mr. Trump, his family members, and related entities and individuals.[2] The subpoenas are designed to obtain documents to inform the Committees' investigations, oversight functions, and legislative judgments, and the district court correctly held that "the committees' subpoenas all are in furtherance of facially legitimate legislative purposes." JA136.

Rather than respect the Financial Services and Intelligence Committees' duly authorized investigations into these serious matters, which fall squarely within the Committees' jurisdictions, Mr. Trump and his companies have repeatedly engaged in stonewalling intended to obstruct and undermine these inquiries. This suit is one of Mr. Trump's many attempts to prevent Congress from obtaining critical information needed to make informed legislative judgments and perform meaningful oversight of

[1] Plaintiffs-appellants are Donald J. Trump (in his individual capacity), Eric Trump, Ivanka Trump, Donald J. Trump, Jr., Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Acquisition LLC, and Trump Acquisition, Corp. For ease of reference, this brief generally refers to plaintiffs-appellants as Mr. Trump. Mr. Trump does not challenge the portions of the Deutsche Bank subpoena that do not relate to plaintiffs-appellants.

[2] The Committees closely coordinated to issue one comprehensive subpoena to Deutsche Bank—with a copy issued by each Committee—seeking the documents necessary to advance each Committee's investigations.

the Executive Branch. Mr. Trump's actions reveal his fundamental misunderstanding of the appropriate role and authority of Congress within our constitutional scheme.

Mr. Trump strains to fit the Committees' subpoenas into one of the few narrow exceptions to Congress's broad power to investigate. But as the district court concluded in rejecting those arguments, none of the exceptions applies here, and the district court's opinion provides convincing grounds for affirmance. Mr. Trump's disdain for the constitutionally based role of Congress in carrying out oversight of the Executive Branch and for the specific investigations of the Committees here is not a basis for this Court to hold that the district court abused its discretion in denying a preliminary injunction. This Court should affirm that decision expeditiously so that the Committees' legitimate investigations can proceed. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511 (1975) (cautioning against "the harm that judicial interference may cause" by enjoining a Congressional subpoena for years during litigation).

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's subject matter jurisdiction under 28 U.S.C. § 1331. JA16. On May 22, 2019, the district court denied plaintiffs' motion for a preliminary injunction. JA157. Plaintiffs filed a timely notice of interlocutory appeal on May 24, 2019. JA159-60. This Court has jurisdiction under 28 U.S.C § 1292(a)(1).

STATEMENT OF THE ISSUE

Whether the district court correctly denied Mr. Trump's motion for a preliminary injunction to enjoin enforcement of the Financial Services Committee's and the Intelligence Committee's subpoenas.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS AND HOUSE RULES

Article I, section 1 of the U.S. Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Rulemaking Clause, U.S. Const., Art. I, § 5, cl. 2, provides in relevant part: "Each House may determine the Rules of its Proceedings[.]"

The pertinent provisions of the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 *et seq.*, and the House and Committee Rules are set forth in the addendum.

STATEMENT OF THE CASE

A. The Committees' Legal Framework

The Constitution grants Congress the power to enact all federal laws. Article I, section 1 provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const., Art. I, § 1.

The Constitution also assigns each house of Congress authority to "determine the Rules of its Proceedings." U.S. Const., Art. I, § 5, cl. 2. Pursuant to this authority,

the 116th Congress adopted the Rules of the House of Representatives, which govern the House during the two-year term. *See* Add. 7-14.[3]

1. The Financial Services Committee

House Rule X establishes the "standing committees" of the House—which include the Financial Services Committee—and assigns each committee "jurisdiction and related functions." House Rule X.1 (Add. 7). The Financial Services Committee's legislative jurisdiction includes "[b]anks and banking, including deposit insurance and Federal monetary policy," "[f]inancial aid to commerce and industry," "[i]nsurance generally," "[i]nternational finance," and "[i]nternational financial and monetary organizations." House Rule X.1(n)(1), (3)-(6) (Add. 7).

The Financial Services Committee, like each of the standing committees, has "general oversight responsibilities" to assist the House in "(1) its analysis, appraisal, and evaluation of—(A) the application, administration, execution, and effectiveness of Federal laws; and (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and (2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate." House Rule X.2(a) (Add. 8). The Financial Services Committee is thus instructed to "review and study on a continuing basis," among other subjects, "any conditions or circumstances that may indicate the

[3] The House Rules were adopted by House resolution on January 9, 2019. H. Res. 6, 116th Cong. (2019).

necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto)." House Rule X.2(b)(1) (Add. 8).

Pursuant to House Rule X, clause 2, the Financial Services Committee submitted to the full House its oversight plan for the 116th Congress. H. Rep. No. 116-40 (2019).[4] This oversight plan includes investigations aimed at ensuring safe banking practices—for example, "examining financial regulators' supervision of the banking, thrift and credit union industries for safety and soundness and compliance with laws and regulations," *id.* at 78, and "the implementation, effectiveness, and enforcement of anti-money laundering/counter-financing of terrorism . . . laws and regulations." *Id.* at 84. These investigations will look for "patterns and trends of money laundering and terrorist finance" including "in the real estate market," and the Financial Services Committee will consider legislative proposals to "address any vulnerabilities identified." *Id.* at 84-85.

The Financial Services Committee has jurisdiction over the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, which Congress enacted "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities." 31 U.S.C. § 5311. The statute also requires that "each financial institution

[4] The oversight plans submitted pursuant to the Rules are an initial "blueprint," H. Rep. No. 116-40, at 8, and are not intended to be exhaustive or restrictive.

shall establish anti-money laundering programs." 31 U.S.C. § 5318(h)(1). At a minimum, these programs must provide internal controls to guard against money laundering, including independent auditing, compliance testing, and employee training. *Id.*

2. The Intelligence Committee

House Rule X also establishes the Permanent Select Committee on Intelligence and assigns it legislative jurisdiction and oversight responsibilities. House Rule X.11(a)(1), (b) (Add. 10). The Intelligence Committee is charged with oversight of the Intelligence Community and all intelligence-related activities and programs of the federal government. H. Res. 658, 95th Cong. (1977).

The Intelligence Committee's jurisdiction includes "matters relating to" "[t]he Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program" and "[i]ntelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense." House Rule X.11(b)(1) (Add. 10-11). The Intelligence Committee is directed to make "regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States." House Rule X.11(c)(1) (Add. 11).

House Rule X, clause 11 broadly defines the "intelligence and intelligence-related activities" within the Intelligence Committee's jurisdiction to include "the

collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States"; "activities taken to counter similar activities directed against the United States"; and "activities of persons within the United States . . . whose political and related activities pose, or may be considered . . . to pose, a threat to the internal security of the United States." House Rule X.11(j)(1)(A), (B), (D) (Add. 12-13).

In addition, the House Rules assign the Intelligence Committee a "special oversight" function: "The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of" the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program. House Rule X.3(m) (Add. 10).

Both the Financial Services Committee and the Intelligence Committee are authorized, "[f]or the purpose of carrying out any of [their] functions and duties" under Rule X, to "hold such hearings as [the Committees] consider[] necessary." House Rule XI.2(m)(1)(A) (Add. 13). The Committees are also empowered "to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary." House Rule XI.2(m)(1)(B) (Add. 13-14).

B. The Financial Services Committee's Investigations

The Financial Services Committee is investigating serious issues regarding financial institutions' compliance with banking laws, including the Bank Secrecy Act, and existing loan practices. Among other concerns, the Financial Services Committee is examining whether current law and banking practices adequately guard against the threat of foreign money laundering and high-risk loans. The two subpoenas challenged here are part of this broader investigation, which also involves subpoenas to seven other financial institutions, the majority of which do not request documents specific to Mr. Trump.

1. As Financial Services Committee Chairwoman Maxine Waters has explained, "[t]he movement of illicit funds throughout the global financial system raises numerous questions regarding the actors who are involved in these money laundering schemes and where the money is going." 165 Cong. Rec. H2698 (daily ed. Mar. 13, 2019). These schemes often employ anonymous corporations as vehicles to launder illicit funds through legitimate investments and enterprises, including real estate and other investments. H. Res. 206, 116th Cong. (2019) ("the influx of illicit money, including from Russian oligarchs, has flowed largely unimpeded into the United States through these anonymous shell companies and into U.S. investments, including luxury high-end real estate"). In fact, public reports have revealed that these types of shell companies were used to purchase various of Mr. Trump's properties. *See* Committees' Opp., ECF No. 51, at 4-5 (May 10, 2019) (citing sources).

Chairwoman Waters has made clear that these concerns are "precisely why the Financial Services Committee is investigating the questionable financing provided to President Trump and the Trump Organization by banks like Deutsche Bank to finance his real estate properties." 165 Cong. Rec. H2698.

If financial institutions are failing to detect money laundering transactions because of shortcomings in the statute or federal regulators' enforcement of banking laws, Congress could strengthen the statutory regime to address those concerns. Indeed, Chairwoman Waters has cautioned that "Congress must close the[] loopholes." 165 Cong. Rec. H2698; H. Res. 206 ("support[ing] efforts to close loopholes that allow corruption, terrorism, and money laundering to infiltrate our country's financial system"). "Bad actors like Russian oligarchs and kleptocrats often use anonymous shell companies and all-cash schemes to buy and sell commercial and residential real estate to hide and clean their money. Today, these all-cash schemes are exempt from the Bank Secrecy Act." 165 Cong. Rec. H2698.

The Financial Services Committee's industry-wide investigations involve various banks, including Deutsche Bank and Capital One, that have reportedly played a role in recent money-laundering schemes or failed to implement adequate anti-money laundering controls. Deutsche Bank was fined by regulators for its role in facilitating a $10 billion so-called Russian "mirror trading" money-laundering scheme, *see* 165 Cong. Rec. H2698, and was reportedly a conduit for the laundering of over

$20 billion in rubles out of Russia.[5] Capital One recently entered a consent order with the Office of the Comptroller of the Currency and agreed to pay a fine of $100 million for failing to correct critical deficiencies in its Bank Secrecy Act and anti-money laundering programs.[6]

To understand and address the problem of money-laundering in the financial sector, including through real estate transactions, the Financial Services Committee is analyzing the banks' practices generally and as applied to specific accounts and transactions. This analysis requires documents showing both the sources and flows of funds, as well as the banks' due diligence. The Financial Services Committee subpoenaed documents from Deutsche Bank and Capital One that will identify any failures in the banks' practices or anti-money laundering programs, including whether any illicit transactions related to Mr. Trump, his family, or his businesses—longtime clients of those banks. To further these investigations, the subpoenaed documents include account opening, closing, and due diligence records (JA37, JA52), periodic account statements showing incoming and outgoing transfers and documents relating to transfers over $10,000 (JA38, JA52-53), suspicious activity reports (JA38, JA53), and internal bank reviews of the relevant accounts (JA40, 53). In addition, the Capital

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[5] Luke Harding, *Deutsche Bank Faces Action over $20 Bn Russian Money-Laundering Scheme*, Guardian (Apr. 17, 2019), https://tinyurl.com/GuardianDeutscheFacesAction.

[6] *In re Capital One, N.A. McLean, Virginia Capital One Bank (U.S.A.), N.A. Glen Allen, Virginia*, Enforcement Action No. 2018-080, 2018 WL 5384428, at *1-2, (O.C.C. Oct. 23, 2018).

One subpoena requests documents relating "to any real estate transaction." JA53. As Chairwoman Waters has noted, 165 Cong. Rec. H2698, these documents will inform the Financial Services Committee's investigations into the sufficiency of the banks' anti-money laundering programs.

2. The Financial Services Committee is also investigating the lending practices of financial institutions, including Deutsche Bank and Capital One, for loans issued to Mr. Trump's family and businesses. As recently reported, over the past two years, numerous financial institutions have issued a total of more than $1 trillion in large corporate loans (called leveraged loans) to heavily indebted companies that may be unable to repay those loans.[7] Over the years, Deutsche Bank, for example, has reportedly provided more than $2 billion in loans to Mr. Trump, despite concerns raised by senior Deutsche Bank officials about some of the loans.[8] Indeed, the statutorily required financial disclosure forms filed by President Trump in May 2018 showed liabilities of at least $130 million owed to Deutsche Bank.[9]

These reports raise troubling questions about whether current law is adequate to ensure safe lending practices, particularly with high-profile clients, such as Mr.

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[7] *See* Damian Paletta, *How Regulators, Republicans and Big Banks Fought for a Big Increase in Lucrative But Risky Corporate Loans*, Wash. Post (Apr. 6, 2019), https://tinyurl.com/Wash-Post-Risky-Loans.

[8] *See* David Enrich, *Deutsche Bank and Trump: $2 Billion in Loans and a Wary Board*, N.Y. Times (Mar. 18, 2019), https://tinyurl.com/NYT2BillioninLoans.

[9] U.S. Office of Gov't Ethics, Form 278e, 2017 Exec. Branch Personnel Public Fin. Disclosure Report of Donald J. Trump, President 45 (signed May 15, 2018), https://tinyurl.com/TrumpForm278e2018.

Trump. The subpoenas to Capital One and Deutsche Bank request any documents relating to such loans for the relevant accounts (JA38, JA53), which could illuminate the soundness of the banks' lending practices and whether changes in the laws governing such loans are needed.

3. The Financial Services Committee has held hearings on the adequacy of the policies and programs at financial institutions that are the subject of these investigations and is considering legislative solutions to combat financial crime, including money laundering.[10] Those legislative proposals include:

- A bill to reform corporate beneficial ownership disclosures and increase transparency, H.R. 2513, 116th Cong. (2019);
- A bill to strengthen the Bank Secrecy Act and anti-money laundering laws, including by improving federal agency oversight of financial institutions, H.R. 2514, 116th Cong. (2019); and
- A bill to require Executive Branch agencies to submit an assessment to Congress regarding the financial holdings of Russian President Vladimir Putin and top Kremlin-connected oligarchs, H.R. 1404, 116th Cong. (2019) (passed by the House on March 12, 2019).

[10] *Examining the BSA/AML Regulatory Compliance Regime: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Comm. on Fin. Servs.*, 115th Cong. (2017); *Implementation of FinCEN's Customer Due Diligence Rule: Hearing Before the Subcomm. on Terrorism & Illicit Fin. of the H. Comm. on Fin. Servs.*, 115th Cong. (2018).

C. The Intelligence Committee's Investigation

The Intelligence Committee is investigating the counterintelligence risks from efforts by Russia and other foreign powers to influence the U.S. political process during and since the 2016 election—including financial leverage that foreign actors may have over Mr. Trump, his family, and his businesses—and considering legislative reforms to address these risks. The Intelligence Committee is also evaluating whether the structure, legal authorities, policies, and resources of the federal agencies tasked with intelligence, counterintelligence, and law enforcement are adequate to combat such threats to national security.[11]

1. As Intelligence Committee Chairman Adam Schiff has explained, the Committee is investigating, among other things: (1) "[t]he extent of any links and/or coordination between the Russian government, or related foreign actors, and individuals associated with Donald Trump's campaign, transition, administration, or business interests, in furtherance of the Russian government's interests"; (2) "[w]hether any foreign actor has sought to compromise or holds leverage, financial or otherwise, over Donald Trump, his family, his business, or his associates"; and (3) "[w]hether President Trump, his family, or his associates are or were at any time at heightened risk of, or vulnerable to, foreign exploitation, inducement, manipulation,

[11] Press Release, U.S. House of Representatives Permanent Select Comm. on Intelligence, Chairman Schiff Statement on House Intelligence Committee Investigation (Feb. 6, 2019), https://tinyurl.com/Feb6PressRelease (Chairman Schiff Press Release).

pressure, or coercion, or have sought to influence U.S. government policy in service of foreign interests." Chairman Schiff Press Release; *see* 165 Cong. Rec. H3482 (daily ed. May 8, 2019).

As part of its investigation, the Committee is examining whether Mr. Trump's long history of foreign business deals and foreign financial ties, including in Russia, were part of Russia's efforts to entangle business and political leaders in corrupt activity or otherwise obtain leverage over them. On March 28, 2019, the Committee held a hearing to "discuss how the Kremlin uses financial leverage and corruption as tools of intelligence operations and foreign policy," including "the use of financial entanglements as a means of compromise."[12] Former U.S. Ambassador to Russia Michael McFaul testified that "in parallel with Putin's use of money, corruption, and property rights as instruments for governing inside Russia, the Russian government instructs its economic actors to make deals with foreign entities to establish increased leverage and influence within these countries."[13]

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[12] *Putin's Playbook: The Kremlin's Use of Oligarchs, Money and Intelligence in 2016 and Beyond: Hearing Before the House Permanent Select Committee of Intelligence*, 116th Cong. (2019) (Committee on Intelligence Hearing: Putin's Playbook) (opening statement of Adam B. Schiff, Chairman, at 1, https://tinyurl.com/ChairmanOpeningStatement); *id.* (prepared statement of Steven Hall, Former Chief of Russian Operations, Central Intelligence Agency at 3-4, https://tinyurl.com/StevenHallTestimony).

[13] *Id.* (prepared statement of Michael McFaul, Former U.S. Ambassador to Russia at 8, https://tinyurl.com/AmbMcFaul).

For decades, Mr. Trump's business interests have intersected with Russia-linked entities and individuals, including oligarchs with ties to President Vladimir Putin.[14] As discussed above, Deutsche Bank—which also had significant ties to Russian state institutions—has long served as a lender of last resort for Mr. Trump, extending loans totaling more than $2 billion. *Supra* p. 12.

In addition, around 2006, Mr. Trump embarked on a multi-year spending spree, apparently spending more than $400 million in cash on various properties. *See* ECF No. 51, at 8 (discussing background and citing sources).[15] These cash outlays occurred during a period in which the Trump Organization was reportedly experiencing significant cash inflows from Russian sources.[16] It has also been reported that wealthy Russians and individuals from former Soviet states used Trump-branded real estate to park—and in some cases launder—large sums of money for over a decade.[17] More recently, Mr. Trump secretly pursued a lucrative licensing deal for Trump Tower Moscow—a deal that involved outreach by Mr. Trump's associate

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[14] House Permanent Select Comm. on Intelligence Minority Members, *Minority Views to the Majority-Produced "Report on Russian Active Measures"* 23-24 (Mar. 26, 2018), https://tinyurl.com/HPSCIMinorityViews; *see also Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 38 (D.D.C. 2018).

[15] Jonathan O'Connell et al., *As the 'King of Debt,' Trump Borrowed to Build His Empire. Then He Began Spending Hundreds of Millions in Cash.*, Wash. Post (May 5, 2018), https://tinyurl.com/WashPostKingofDebt.

[16] *See* Michael Hirsch, *How Russian Money Helped Save Trump's Business*, Foreign Pol'y (Dec. 21, 2018, 1:31 PM), https://tinyurl.com/FPRussianMoney.

[17] *Id.*

to the Russian government and would have required Kremlin approval—through at least June 2016, after Mr. Trump had effectively secured the Republican presidential nomination.[18] At the same time, Mr. Trump was advocating policies favored by Russia and praising President Putin on the campaign trail.[19] It is unclear whether the Trump Tower Moscow deal remains latent.[20]

To understand Mr. Trump's foreign financial ties and the extent of foreign powers' financial leverage over him, the Intelligence Committee subpoenaed Deutsche Bank records relating to Mr. Trump, his family members, and affiliated entities. The subpoenaed documents include: bank and brokerage account records (JA37-39); mortgages, loans, and lines of credit records (JA38); internal Deutsche Bank reviews concerning the accounts (JA38, JA40); suspicious activity reporting (JA38, JA40); and documents from the files of relationship managers and bankers who served Mr. Trump, his family, and related entities (JA40-41). The subpoena specifically seeks documents showing all financial ties between Mr. Trump, his family, and entities and any foreign individuals, entities, or governments. JA39. The subpoenaed documents will aid the Intelligence Committee in investigating whether

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[18] Mark Mazzetti et al., *Moscow Skyscraper Talks Continued Through 'the Day I Won,' Trump Is Said to Acknowledge*, N.Y. Times (Jan. 20, 2019), https://tinyurl.com/NYTMoscowSkyscraper.

[19] Committee on Intelligence Hearing: Putin's Playbook (prepared statement of Michael McFaul, Former U.S. Ambassador to Russia, at 9-10, https://tinyurl.com/AmbMcFaul).

[20] *See Remarks by President Trump Before Marine One Departure*, White House (Nov. 29, 2018, 10:23 AM), https://tinyurl.com/Nov29Remarks.

Mr. Trump is subject to foreign leverage by illuminating the extent and details of Mr. Trump's financial dealings with Russia and other foreign countries in the years leading up to and including his presidency.

As Chairman Schiff has explained, this investigation and the requested financial information concerning Mr. Trump, will inform the Committee's consideration of legislative reforms and its oversight of the intelligence community. The subpoena to Deutsche Bank is "vital to fully identify the scope of this threat" of foreign financial leverage and "essential to . . . devise effective legislative changes, policy reforms, and appropriations priorities." 165 Cong. Rec. H3482. The investigation "will inform a wide-range of legislation and appropriations decisions," including, for example, to expose "conflicts of interest that arise from financial entanglements of individuals responsible for [the Nation's] foreign policy," to prevent foreign governments from "us[ing] American corporations to secretly funnel donations or engage in money laundering," and to "[s]trengthen legal authorities and capabilities for our intelligence and law enforcement agencies to better track illicit financial flows." *Id.*

2. The Intelligence Committee's investigations will inform numerous legislative proposals to protect the U.S. political process from the threat of foreign influence and strengthen national security, including:

- A bill to require federal campaign officials to notify law enforcement if offered assistance by agents of another government and to report all meetings with foreign agents, H.R. 2424, 116th Cong. (2019);

- A bill to require the Director of National Intelligence to submit to Congress intelligence assessments of Russian intentions relating to North Atlantic Treaty Organization and Western allies, H.R. 1617, 116th Cong. (2019) (passed the House on March 12, 2019);
- A bill to require an intelligence threat assessment prior to every federal general election, H.R. 1474, 116th Cong. (2019); and
- A bill to improve election security and oversight and provide for national strategy and enforcement to combat foreign interference, H.R. 1, 116th Cong. (2019) (passed the House on March 8, 2019).

D. The Right To Financial Privacy Act

Mr. Trump has invoked the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 *et seq.*, to challenge the subpoenas at issue. This 1978 statute restricts certain government entities from obtaining customer records from financial institutions. RFPA prohibits a financial institution's disclosure of customer financial records "to any Government authority . . . except in accordance with the provisions of this chapter." *Id.* § 3403(a).

RFPA provides that "no Government authority may have access to or obtain copies of" a customer's financial records from a financial institution, unless the customer has authorized disclosure or the disclosure is in response to a subpoena, search warrant, or formal written request and complies with additional requirements. 12 U.S.C. § 3402(1)-(5); *see also id.* §§ 3404-3408. For example, RFPA provides that a

"Government authority" may obtain a customer's financial records pursuant to a judicial subpoena only if "such subpoena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry." *Id.* § 3407(1). In addition, the customer must be provided with notice of the subpoena and an opportunity to object. *Id.* § 3407(2).

RFPA's disclosure restrictions thus apply when the "financial records of any customer" are sought by a "Government authority." The term "Government authority" is statutorily defined as "any agency or department of the United States, or any officer, employee, or agent thereof." 12 U.S.C. § 3401. RFPA defines "customer" as a "person or authorized representative of that person," and further defines "person" as "an individual or a partnership of five or fewer individuals." *Id.* § 3401(4) & (5). Accordingly, RFPA applies when an agency or department of the United States seeks the financial records of an individual or partnership of five or fewer people.

E. Procedural History Of This Litigation

Mr. Trump filed this suit seeking an injunction against enforcement of the Financial Services Committee's subpoena to Capital One and the Financial Services and Intelligence Committees' subpoenas to Deutsche Bank. Following a hearing, the district court issued an opinion from the bench and denied Mr. Trump's motion for a preliminary injunction. JA117-56 (opinion); JA157 (order).

The district court held that plaintiffs "are unlikely to succeed on the merits of their claims." JA120. The court questioned "whether plaintiffs may show entitlement to injunctive relief merely by showing serious questions going to the merits" because they seek to stay government action, JA146, but held that plaintiffs had failed to satisfy even that lower bar, JA120. The court concluded that the questions presented "are not sufficiently serious in light of Supreme Court precedent" governing Congressional subpoena enforcement and "the plain text of the Right to Financial Privacy Act." *Id.* To the contrary, "the Supreme Court has likely foreclosed the path plaintiffs ask this Court to travel." JA150. The court found "that plaintiffs have shown a likelihood of irreparable harm absent an injunction" (JA123), but that the balance of hardships did not weigh in Mr. Trump's favor (JA150).

On the merits of Mr. Trump's subpoena enforcement challenge, the court explained that "there can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation." JA126. "[T]he wisdom of congressional approach or methodology is not open to judicial veto, nor is the legitimacy of a congressional inquiry to be defined by what it produces." JA138 (quoting *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975)).

Applying these principles, the court held that the challenged subpoenas were issued "in furtherance of a legitimate legislative purpose, plainly related to the subjects on which legislation can be had." JA133, JA135. Mr. Trump was therefore "highly

unlikely to succeed on the merits of [the] constitutional claim." JA146. The court noted that the Financial Services Committee "is investigating whether existing policies and programs at financial institutions are adequate to ensure the safety and soundness of lending practices, and the prevention of loan fraud." JA131. The Intelligence Committee is investigating efforts by Russia to influence the U.S. political process, financial leverage that foreign actors may have over Mr. Trump, and whether the United States has adequate resources to combat such threats. JA134.

The district court rejected Mr. Trump's argument that the Committees were merely investigating "a private citizen," explaining that "Congress' investigative power is not judged in a vacuum." JA135. The court also found "unpersuasive" (JA137) Mr. Trump's argument that the subpoenas were too broad, explaining that the Supreme Court has adopted a "forgiving" standard and the records are "not plainly incompetent or irrelevant to any lawful purpose." *Id.* (quoting *McPhaul v. United States*, 364 U.S. 372, 381 (1960)). The court held that these subpoenas, "while undeniably broad, [are] clearly pertinent to the [C]ommittees' legitimate legislative purposes." JA138 (declining to "engage in a line-by-line review of the subpoenas' requests").

The district court further rejected Mr. Trump's challenge that the Committees had not identified specific legislative proposals within their jurisdictions because "the subject of the congressional inquiry simply must be one 'on which legislation could be had.'" JA139. The court rejected Mr. Trump's argument that the Committees were impermissibly engaged in law enforcement activities. JA141-42. And the court

declined Mr. Trump's invitation to examine the Committees' motives, explaining that courts "should not look behind the legitimate legislative purpose." JA142.

On the merits of Mr. Trump's RFPA claim, the district court held that Congress did not fall within the statutory definition of "government authority," which is an "agency or department of the United States." JA124. "[T]he structure and context of the RFPA makes clear that Congress did not believe it was binding itself" to the statute's restrictions. JA125.

Finally, the district court held that Mr. Trump had "failed to establish that the balance of equities and hardships, along with the public interest, favor a preliminary injunction." JA151. As the court explained, "delaying what is likely lawful legislative activity is inequitable" (*id.*), particularly because "the House of Representatives is not a 'continuing body,' [and] any delay in the proceedings may result in irreparable harm to the committees" (JA152 (citation omitted)). The court found a clear public interest "in expeditious and unimpeded Congressional investigations into core aspects of the financial and election systems," and held that "the public interest weighs strongly against a preliminary injunction." JA153.

SUMMARY OF THE ARGUMENT

The district court correctly held that Mr. Trump is not entitled to the extraordinary relief of a preliminary injunction to impede legitimate Congressional investigations on issues of national importance. As the Supreme Court has reiterated over the decades, Congress has broad authority to investigate. This authority is a

necessary element of Congress's Article I power to legislate: effective and wise legislation requires information. The Supreme Court has stressed in numerous rulings that Congress may compel responses to its subpoenas in furtherance of legitimate legislative purposes. These basic principles are undisputed, and they govern this case, as the district court held.

The district court correctly found that "the committees have exercised their legitimate powers in issuing the challenged subpoenas" and that Mr. Trump is "highly unlikely to succeed on the merits of the[] constitutional challenge." JA146. The Committees are investigating subjects "on which legislation could be had." *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927).

As described above, the Financial Services Committee is conducting industry-wide investigations concerning the integrity of the U.S. financial system, including money laundering and bank lending practices. These investigations are predicated, in part, on public reports that have raised serious questions about the efficacy of Deutsche Bank's and Capital One's anti-money laundering programs, and whether any illicit transactions may have touched accounts maintained at those institutions by Mr. Trump, his family, or his businesses, as well as the soundness of the banks' lending practices. In furtherance of its investigations, the Financial Services Committee subpoenaed documents from Deutsche Bank and Capital One—and seven other financial institutions—to inform its legislative judgment concerning potential changes to the banking laws.

The Intelligence Committee is simultaneously investigating counterintelligence risks arising from efforts by Russia and other foreign powers to influence the U.S. political process during and since the 2016 election—including financial leverage that foreign actors may have over Mr. Trump, his family, and his business. In connection with this investigation, the Intelligence Committee is evaluating whether the current structure, legal authorities, and resources of the federal agencies tasked with intelligence, counterintelligence, and law enforcement are adequate to combat such threats to national security. The Intelligence Committee subpoenaed documents from Deutsche Bank to shed light on these issues and inform its legislative judgment.

Mr. Trump nevertheless urges that the subpoenas are invalid because they lack a legitimate legislative purpose and are overbroad. Mr. Trump erroneously attempts to conflate Congressional subpoenas issued pursuant to Congress's Article I authority with discovery subpoenas issued in civil court litigation. This flawed argument reflects a fundamental misunderstanding of how Congress functions and its Constitutionally based investigative powers: Congressional subpoenas serve entirely different purposes from those in civil litigation and lawfully can be much broader.

Mr. Trump's additional attempts to shoehorn this case into one of the narrow exceptions to Congress's broad investigatory authority fare no better. That a Congressional investigation may reveal unlawful conduct does not mean that the investigation is law enforcement activity, as Mr. Trump contends. Nor does the fact that the Financial Services Committee seeks documents relating to Mr. Trump, as part

of a broader investigation into sector-wide concerns, or that the Intelligence Committee requests records relating to domestic transactions in addition to international transactions, in any way undermine the validity of the subpoenas.

As the district court concluded, Mr. Trump cannot succeed on his RFPA challenge to the subpoenas because RFPA does not apply to Congressional requests for financial records. JA125. The statute's plain text, context, and legislative history establish that Congress is not a "government authority" as that term is defined in the statute. 12 U.S.C. § 3401.

Finally, the district court did not clearly err in finding that the balance of the equities and hardships and the public interest weigh against a preliminary injunction. JA151-53. As the court explained, "delaying what is likely lawful legislative activity is inequitable." JA152. Mr. Trump cannot overcome the compelling public interest in expeditious and unimpeded Congressional investigations into core aspects of the financial system and national security that touch every member of the public.

A ruling here in Mr. Trump's favor would disregard nearly a century of Supreme Court precedent. This Court should expeditiously affirm the district court's denial of Mr. Trump's motion for a preliminary injunction. The Committees have essential work to do on behalf of the American people, and Mr. Trump's efforts to sabotage that work must be rejected.

STANDARD OF REVIEW

This Court reviews a district court's denial of a preliminary injunction for abuse of discretion and reviews the district court's legal rulings de novo. *North Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 36 (2d Cir. 2018).

ARGUMENT

The law does not entitle Mr. Trump to the "extraordinary and drastic remedy," *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008), of a preliminary injunction to prevent Deutsche Bank and Capital One from complying with valid Congressional subpoenas. Ordinarily, to obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Mr. Trump invokes a different but related standard, arguing that he can show "sufficiently serious questions going to the merits of [his] claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party." *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) (quotation marks omitted). This standard should not apply here because the Committees are exercising their Article I authority to examine issues of national importance and, as the court noted, "[a] plaintiff cannot rely on the 'fair-ground-for-litigation' alternative to challenge 'governmental action taken in the

public interest pursuant to a statutory or regulatory scheme.'" JA146-47; *Otoe-Missouria Tribe of Indians*, 769 F.3d at 110. Mr. Trump cannot satisfy either standard.

I. THE COMMITTEES' SUBPOENAS ARE VALID AND ENFORCEABLE

A. Mr. Trump's Constitutional Challenge To The Subpoenas Fails

1. Congress's power to investigate is broad

As explained above, Article I of the Constitution grants Congress "[a]ll legislative Powers." U.S. Const., Art. I, § 1. In *McGrain v. Daugherty*, 273 U.S. 135 (1927), the Supreme Court held "that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *Id.* at 174. "This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate." *Quinn v. United States*, 349 U.S. 155, 160 (1955). The Supreme Court has emphasized that, "[w]ithout the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively." *Id.* at 160-61.

The law governing Congress's power to investigate is well settled, but the Supreme Court's decision in *McGrain* bears emphasis given its resonance with the facts here. *McGrain* involved a Senate select committee's investigation of whether then-Attorney General Harry M. Daugherty had failed to properly prosecute alleged conspirators for the corrupt handling of oil leases in the Teapot Dome scandal. *McGrain*, 273 U.S. at 151-52. The Senate committee subpoenaed testimony from the

Attorney General's brother, who failed to appear. *Id.* at 152-53. The Senate issued a warrant and the sergeant at arms took him into custody, but the district court granted a writ of habeas corpus, holding that the Senate had "exceeded its powers under the Constitution." *Id.* at 154. The *McGrain* district court's reasoning deserves close attention because the Supreme Court unanimously rejected it:

> The extreme personal cast of the original resolutions; the spirit of hostility towards the then Attorney General which they breathe; that it was not avowed that legislative action was had in view until after the action of the Senate had been challenged; and that the avowal then was coupled with an avowal that other action was had in view—are calculated to create the impression that the idea of legislative action being in contemplation was an afterthought.

Id. at 176 (quoting *Ex parte Daugherty*, 299 F. 620, 638 (S.D. Ohio 1924)).

Significantly, the *McGrain* district court concluded that the Senate was not investigating "the Attorney General's office," but rather "the former attorney general," and by "put[ting] him on trial before it," the Senate was "exercising the judicial function," which "it has no power to do." 273 U.S. at 177.

The Supreme Court held that the district "court's ruling on this question was wrong." *McGrain*, 273 U.S. at 177. The Court acknowledged that the Senate's resolution authorizing the investigation "does not in terms avow that it is intended to be in aid of legislation." *Id.* But even in the absence of an express statement of legislative purpose, the Court concluded that the investigation was legitimate because "the subject was one of which legislation *could be had*." *Id.* (emphasis added). Because

"[t]he only legitimate object the Senate could have in ordering the investigation was to aid it in legislating," the Court stressed that "the presumption should be indulged that this was the real object." *Id.* at 178.

In upholding the subpoena as a valid exercise of the Senate's authority, the Supreme Court rejected Mr. Daugherty's argument that "this power of inquiry, if sustained may be abusively and oppressively exerted." *McGrain*, 273 U.S. at 175. The Court explained that "[t]he same contention might be directed against the power to legislate, and of course would be unavailing." *Id.* The Court similarly dismissed the contention that the Senate was improperly attempting to try the Attorney General, stressing that it was not a "valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part." *Id.* at 179-80.

The Supreme Court in *McGrain* distinguished its earlier decision in *Kilbourn v. Thompson*, 103 U.S. 168 (1880), which had held that the House exceeded its authority in investigating a bankruptcy settlement where the United States was a dissatisfied creditor, and the settlement was "subject to examination and approval or disapproval by the bankruptcy court." *McGrain*, 273 U.S. at 170. The Court explained that the bankruptcy settlement was not a matter "in respect to which valid legislation could be had" because the case was "still pending in the bankruptcy court" and "the United States and other creditors were free to press their claims in that proceeding." *Id.* at 171. In these narrow circumstances, the Supreme Court held that the House had exceeded the limits of its authority and "assumed a power which could only be

properly exercised by another branch of the government, because it was in its nature clearly judicial." *Kilbourn*, 103 U.S. at 192; *United States v. Rumely*, 345 U.S. 41, 46 (1953) (noting that *Kilbourn* has been subject to "weighty criticism" and "inroads . . . have been made upon [*Kilbourn*] by later cases").

The Supreme Court's subsequent decisions have reaffirmed the broad scope of Congress's power to investigate. That power "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them." *Watkins v. United States*, 354 U.S. 178, 187 (1957). "It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Id.* The scope of Congress's "power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975) (same).

The Supreme Court has made clear that the "legitimacy of a congressional inquiry" is not "to be defined by what it produces." *Eastland*, 421 U.S. at 509. "The very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result." *Id.*; *see also Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 44 (D.D.C. 2018) (explaining that the court

"will not—and indeed, may not—engage in a line-by-line review of the Committee's requests" (citing *McSurely v. McClellan*, 521 F.2d 1024, 1041 (D.C. Cir. 1975)).

In determining whether a Congressional inquiry is legitimate, courts "do not look to the motives alleged to have prompted it." *Eastland*, 421 U.S. at 508. Instead, courts assume—as the district court did here—"that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties." *Exxon Corp. v. FTC*, 589 F.2d 582, 589 (D.C. Cir. 1978). Thus, "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power." *Barenblatt*, 360 U.S. at 132. As the district court explained, the court's function is "not to be found in testing the motives of committee members." JA143; *Watkins*, 354 U.S. at 200 ("Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.").

While Congress's power to investigate is "broad," *Watkins*, 354 U.S. at 187, it is not unlimited. The Supreme Court has recognized that Congress lacks the "general authority to expose the private affairs of individuals without justification in terms of the functions of Congress." *Id.* There is thus "no congressional power to expose for the sake of exposure." *Id.* at 200 (explaining that the public's right to be informed about the "workings of its government" "cannot be inflated into a general power to

expose where *the predominant result can only be* an invasion of the private rights of individuals" (emphasis added)).

In addition, Congress may not exercise "the powers of law enforcement," which are assigned "to the Executive and the Judiciary." *Quinn*, 349 U.S. at 161. But "[t]o find that a committee's investigation has exceeded the bounds of legislative power it *must be obvious* that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) (emphasis added). Finally, the Supreme Court has stated that Congress cannot investigate "an area in which Congress is forbidden to legislate." *Quinn*, 349 U.S. at 161 & n.23 (citing *Rumely*, 345 U.S. at 46).

Mr. Trump argues (Br. 21, 27-28) that "pertinency" is a further limitation on Congress's power to subpoena records. The concept of "pertinency" arises in criminal cases involving noncompliance with a Congressional subpoena because the relevant statute criminalizes the "refus[al] to answer any question *pertinent to the question under inquiry*." 2 U.S.C. § 192 (emphasis added); *Russell v. United States*, 369 U.S. 749, 756-57 (1962) (pertinency is "the basic preliminary question . . . in determining whether a criminal offense had been alleged or proved"). But even where pertinency applies to determine criminal responsibility for failing to comply with a Congressional subpoena, the standard "is a forgiving one." JA137. The records must not be "plainly incompetent or irrelevant to any lawful purpose (of the Subcommittee) in the discharge of (its) duties," but must be "reasonably relevant to the inquiry." *McPhaul v.*

United States, 364 U.S. 372, 381 (1960) (quotation marks omitted). As the district court found, the subpoenaed documents here are "clearly pertinent to the [C]ommittees' legitimate legislative purposes." JA138.

2. The Financial Services and Intelligence Committees' subpoenas unquestionably have legitimate legislative purposes

The district court correctly concluded that "the [C]ommittees' subpoenas all are in furtherance of facially legitimate legislative purposes." JA136.

Financial Services Committee. As set forth in detail above, the Financial Services Committee is investigating, among other issues, "industry-wide compliance with banking statutes and regulations, particularly anti-money laundering policies" (JA132), and "whether existing policies and programs at financial institutions are adequate to ensure the safety and soundness of lending practices, and the prevention of loan fraud" (JA131). These issues are squarely within the Committee's legislative jurisdiction over "[b]anks and banking, including deposit insurance and Federal monetary policy," under House Rule X.1(n)(1) (Add. 7), and its general oversight responsibility under House Rule X.2 (Add. 8-9).

The Financial Services Committee has jurisdiction over the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, which imposes reporting requirements on financial institutions to support law enforcement and counter-intelligence activities. *United States v. Goldberg*, 756 F.2d 949, 954 (2d Cir. 1985). The statute requires that "each financial institution shall establish anti-money laundering programs," that must

provide internal controls to guard against money laundering. 31 U.S.C. § 5318(h)(1). The Financial Services Committee is investigating banks' compliance with the statute to inform its legislative judgment about strengthening this anti-money laundering regime. *See, e.g.*, H.R. 2514, 116th Cong. (2019).

The Financial Services Committee's subpoenas to Deutsche Bank and Capital One are part of this industry-wide investigation. Both banks have reportedly experienced significant failures in their anti-money laundering programs. Deutsche Bank was fined by regulators for its role in a $10 billion Russian "mirror trading" scheme and was reportedly a conduit for billions of dollars laundered out of Russia. Capital One recently agreed to pay a $100 million fine to federal regulators for failures in its Bank Secrecy Act and anti-money laundering programs. *Supra* p. 11.

To understand how these money-laundering schemes escape detection—and whether changes in the law could improve anti-money laundering programs—the Financial Services Committee must trace the illicit transactions from their sources to their endpoints, and the subpoenas at issue are designed to obtain documents that will aid the Financial Services Committee in doing so. *See* JA38 (requesting documents relating to transfers greater than $10,000); JA52-53 (similar).

Relatedly, as Chairwoman Waters has explained, the Financial Services Committee is examining the use of anonymous shell corporations to launder money through real estate and other legitimate investments. 165 Cong. Rec. H2697, H2698 (daily ed. Mar. 13, 2019); *see also* H. Res. 206, 116th Cong. (2019). As Chairwoman

Waters observed, these schemes have been used by "[b]ad actors" to launder money, including through real estate, and "[t]oday, these all-cash schemes are exempt from the Bank Secrecy Act." 165 Cong. Rec. H2698. Public reports have revealed that these types of shell companies have been used to purchase various of Mr. Trump's properties. And Mr. Trump, his family, and his businesses are longtime clients of Deutsche Bank and Capital One. Thus, "the public record establishes that [plaintiffs] serve as a useful case study for the broader problems being examined by the Committee." JA133.

The Financial Services Committee has issued subpoenas for documents that will allow the Committee to evaluate Deutsche Bank's and Capital One's anti-money laundering compliance programs. These records include the banks' internal analysis of accounts—such as Mr. Trump's—that pose risks of money-laundering (including because of reported purchases of Trump real estate by anonymous shell corporations), and the banks' suspicious activity reports. JA38, JA40, JA53. The documents sought will shed light on the threat of money laundering, including through shell corporations and real estate, and the need for legislative solutions.

In addition, the Financial Services Committee is examining the issuance of large corporate loans to heavily indebted companies that may be unable to repay them, including loans made to Mr. Trump, his family, and his businesses. *See* JA131-32. The Financial Services Committee seeks to understand whether current lending standards and practices are adequate to ensure safe lending, particularly with high-

profile customers such as Mr. Trump. The subpoenas to Capital One and Deutsche Bank request documents relating to any such loans (JA38, JA53), which could inform whether changes in lending laws are needed. As the district court recognized, "the banks' lending practices, including loans made to plaintiffs, are an important piece to that investigation." JA133.

Therefore, as the district court held, the Financial Services Committee's "investigation[s] and attendant subpoenas are in furtherance of a legitimate legislative purpose, plainly related to the subject on which legislation can be had." JA133.

Intelligence Committee. The Intelligence Committee has broad jurisdiction over matters relating to "[t]he Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program," as well as "[i]ntelligence and intelligence-related activities of all other departments and agencies of the Government." House Rule X.11(b)(1)(A)-(B) (Add. 10). Pursuant to its jurisdiction, the Committee is investigating foreign influence in the U.S. political process, including any financial leverage that foreign actors may have over Mr. Trump, and whether current federal authorities, policies, and resources are adequate to combat these threats to national security.

As the district court summarized, Chairman Schiff has stated that "the Intelligence Committee would conduct a rigorous investigation into efforts by Russia and other foreign entities to influence the U.S. political process during and since the 2016 U.S. election; and that the Committee would work to fulfill its responsibility to

provide the American people with a comprehensive accounting of what happened, and what the United States must do to protect itself from future interference and malign influence operations." JA135. Chairman Schiff has further emphasized "that the committee also plans to develop legislation and policy reforms to ensure the U.S. government is better positioned to counter future efforts to undermine our political process and national security." *Id.* This investigation "is, by definition, not limited to Mr. Trump's time in office and, given the closely held nature of the Trump Organization, must include his close family members." JA134.

As detailed above, the Intelligence Committee's investigations has explored through public hearings Russia's use of "financial leverage and corruption as tools of intelligence operations and foreign policy," including "the use of financial entanglements as a means of compromise."[21] For decades, Mr. Trump's business interests have intersected with Russian actors, including those with ties to President Putin. *Supra* p. 16. At the same time, Deutsche Bank, which also has ties to Russian state institutions and has been implicated in Russian money-laundering schemes, has reportedly loaned Mr. Trump more than $2 billion. *Supra* p. 12. Mr. Trump reportedly spent hundreds of millions of dollars in cash at the same time the Trump Organization was apparently receiving significant cash inflows from Russian sources. *Supra* p. 16. And Mr. Trump pursued business deals in Russia at least through June

[21] Committee on Intelligence Hearing: Putin's Playbook (opening statement of Chairman Schiff, at 2, https://tinyurl.com/ChairmanOpeningStatement).

2016—after securing the Republican Presidential nomination—while advocating policies favored by Russia. *Supra* p. 17.

The documents subpoenaed from Deutsche Bank will shed light on "Mr. Trump's complex financial arrangements, including how those arrangements intersect with Russia and other foreign governments and entities" (JA134) and whether foreign individuals, entities, or states have influence or leverage over Mr. Trump. These documents include materials relating to Mr. Trump's, his family's, and his businesses' bank and brokerage accounts, mortgages, loans, and lines of credit, internal Deutsche Bank reviews and reports on the accounts, suspicious activity reports, and documents from the relationship managers and bankers who served Mr. Trump. JA37-41.

As Chairman Schiff has explained, the investigations, including these documents, are "essential to . . . devise effective legislative changes, policy reforms, and appropriations priorities." 165 Cong. Rec. H3482 (daily ed. May 8, 2019). For example, the Intelligence Committee is considering legislation that would strengthen election laws to better protect against intelligence threats and combat foreign influence, *see* H.R. 1, 116th Cong. (2019); H.R. 2424, 116th Cong. (2019); H.R. 1474, 116th Cong. (2019); and legislation requiring the Director of National Intelligence to submit intelligence assessments of Russian intentions to appropriate Congressional committees, H.R. 1617, 116th Cong. (2019).

The district court correctly concluded that the Intelligence Committee's "investigation and attendant subpoena is in furtherance of a legitimate legislative purpose, plainly related to subjects on which legislation can be had." JA135.

3. None of the exceptions to Congress's broad investigatory authority applies here

Mr. Trump raises various challenges to the subpoenas to Capital One and Deutsche Bank, but none of his arguments withstands scrutiny. That Mr. Trump dislikes the Committees' investigations is no basis for this Court to hold that the district court abused its discretion in denying the preliminary injunction.

1. Mr. Trump argues (Br. 27-30) that the district court erred by refusing to narrow the subpoenas. But the Congressional subpoenas issued here are not part of "an ordinary civil case," where a court might simply direct the parties to go "into a room" and negotiate "until [they] come back with a reasonable subpoena." JA94. Instead, Mr. Trump challenges Congressional subpoenas that were duly authorized in connection with investigations that have legitimate legislative purposes. This situation thus bears little resemblance to the issues posed by a subpoena issued pursuant to the Federal Rules of Civil Procedure as part of civil litigation. The district court was correct to conclude that, in these circumstances, the court should not "engage in a line-by-line review" because "'the wisdom of [C]ongressional approach or methodology is not open to judicial veto.'" JA138 (quoting *Eastland*, 421 U.S. at 509).

Mr. Trump contends (Br. 34, 36-37) that certain of the Committees' document requests are unlikely to produce materials that will advance their legislative agendas. But "[t]he propriety" of a Congressional subpoena "is a subject on which the scope of [the Court's] inquiry is narrow." *Eastland*, 421 U.S. at 506 ("The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." (quotation marks omitted)); *Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 21 (D.D.C. 1994) ("it is manifestly impracticable to leave to the subject of the investigation alone the determination of what information may or may not be probative of the matters being investigated"). And the Supreme Court has made clear that the legitimacy of a Congressional investigation is not "defined by what it produces" because "[t]he very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises." *Eastland*, 421 U.S. at 509. "To be a valid legislative inquiry there need be no predictable end result." *Id.*

Applying these principles, the district court correctly found that the standard for evaluating relevance "is a forgiving one." JA137. And the handful of specific requests that Mr. Trump challenges as overbroad readily satisfies that standard.

Mr. Trump notes (Br. 34) that the Financial Services Committee sought documents from Capital One concerning account opening, due diligence, and closing records without time limitation. But, as explained above, the Financial Services Committee's investigations into bank compliance with anti-money laundering

programs, as well as the soundness of loan practices, requires a complete understanding of funds' sources, their movement through accounts, and the treatment of preferred customer accounts from the time those accounts are opened. Similarly, given Mr. Trump's entities' complex financial relationships, the request for Capital One documents concerning "[a]ny principal" of those entities (JA52) is reasonably related to the investigation into illicit money laundering transactions and loan practices because such transactions may have touched accounts held in the name of the Trump entities' principals. Moreover, the subpoena seeks account opening documents without time limitation because those records will show who had control of the accounts and what due diligence the banks conducted when the accounts were opened.

Mr. Trump's overbreadth challenge to the Intelligence Committee's subpoena fails for similar reasons. Mr. Trump objects (Br. 36) that the subpoena to Deutsche Bank "asks for all *domestic* transactions," which, in Mr. Trump's view, "are not reasonably relevant to an alleged investigation into *foreign* leverage and interference." This argument reveals a lack of understanding of how complex financial investigations are conducted. To determine whether a foreign power may have financial leverage over Mr. Trump, the Intelligence Committee requires domestic financial data: what appears to be a purely *domestic* transaction, such as one involving two domestic corporate entities, could involve a foreign individual or entity that is the beneficial owner of the domestic corporation. Mr. Trump's concern (Br. 37) that the Deutsche

Bank subpoena covers "minor children, the President's grandchildren, and Plaintiffs' spouses" similarly fails to appreciate, as counsel for the House explained during argument, that "people who are committing financial fraud" and engaging in illicit transactions may do so by creating "dummy corporations," placing "relatives in charge," and hiding assets "in the names of their grandchildren." JA101. Mr. Trump's argument (Br. 36-37) that the time frame of the Deutsche Bank subpoena is overbroad also misunderstands the Intelligence Committee's investigation. A foreign power could have developed financial leverage over Mr. Trump years before he became President, when he had significant foreign business dealings. These records are obviously "reasonably related" to the Intelligence Committee's investigations.

Mr. Trump relies (Br. 28, 30) on two cases to argue that the court should narrow an overbroad Congressional subpoena, but those decisions are inapposite. In *Hearst v. Black*, 87 F.2d 68 (D.C. Cir. 1936), the D.C. Circuit concluded that a Senate Committee's request for a newspaper and magazine publisher's telegraph records, which the court described as concerning "matters unrelated to the legislative business in hand," was unauthorized and explained that if the publisher were questioned before the Committee as to those telegraph messages "he would be entitled to refuse to answer." *Id.* at 71 (citing *McGrain*, 273 U.S. 135). Unlike in *Hearst*, the Financial Services and the Intelligence Committees here seek relevant documents in investigations with valid legislative purposes.

In *Bergman v. Senate Special Committee on Aging*, 389 F. Supp. 1127 (S.D.N.Y. 1975), the district court upheld a Senate subcommittee subpoena for any documents relating to plaintiffs' nursing home and any "records reflecting both purely personal financial matters and nursing home related matters." *Id.* at 1131. The court held, however, that the subcommittee's jurisdiction—to investigate aging and nursing homes—did not encompass "documents totally unrelated to plaintiffs' nursing home activities." *Id.* at 1130-31. Assuming *Bergman* was correctly decided, it has no relevance to the different investigations here, which fall squarely within the Committees' jurisdictions.[22]

Mr. Trump contends that, even if the court does not narrow the subpoenas, it could "send the parties back to the negotiating table." Br. 29 (citing *United States v. AT&T*, 551 F.2d 384, 394 (D.C. Cir. 1976)). But this suit is not, as Mr. Trump suggests (*id.*), a dispute "between Congress and the Executive." Unlike in *AT&T*, the subpoenas at issue here do not request official Executive Branch documents from a third party. *See* 551 F.2d at 385-87 (detailing the history of negotiations between the White House and Congress). Nor has Mr. Trump offered any reason to think that his reference to the parties going "to the negotiating table" (Br. 29) is in any way credible.

[22] Mr. Trump's reliance (Br. 30) on *United States v. Patterson*, 206 F.2d 433 (D.C. Cir. 1953), is also misplaced. *Patterson* was a case involving a criminal indictment for contempt, not a civil subpoena enforcement challenge. In that context, the D.C. Circuit made clear that "[t]he burden is on the court to see that the subpoena is good in its entirety and it is not upon the person who faces punishment to cull the good from the bad." *Id.* at 434 (quotation marks omitted).

It is obvious that nothing Mr. Trump would in fact offer (as opposed to using as a delay tactic) could meet the Committees' significant investigatory interests in obtaining comprehensive financial records from the banks. If Mr. Trump were serious about this point, he would already have specified what types of documents he would not contest the banks turning over to Congress at once.

Finally, Mr. Trump acknowledges that Congress has an "informing function" that "is an application of" its legislative function. Br. 23 (emphasis omitted). As the Supreme Court has observed: "It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. … Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served[.]" *Rumely*, 345 U.S. at 43 (quoting Woodrow Wilson, *Congressional Government: A Study in American Politics*, 303 (1913)). Even if Congress's informing function were limited to agency oversight as Mr. Trump argues (Br. 24), that would not invalidate the investigations here, which involve—among other issues—oversight of the national intelligence agencies and financial regulatory agencies.

2. Mr. Trump recognizes (Br. 25-26) that courts cannot examine Congress's motives to determine the validity of a subpoena. *Barenblatt*, 360 U.S. at 132. Mr. Trump contends, however, that this Court should determine "what the Committee's *actual* purpose is through the available evidence." Br. 25. But the only purportedly

improper purpose he identifies is whether the Committees are impermissibly engaged in law enforcement. Br. 31-32, 35-36. The Committees are not doing so: the fact that criminal conduct by Mr. Trump might both inform the Committees' legislative judgments and be unlawful does not mean the Committees are engaged in a law enforcement investigation. Mr. Trump's related suggestion (Br. 35) that the Intelligence Committee is "*itself* conduct[ing] intelligence" fails to appreciate that the Intelligence Committee cannot assess whether the intelligence agencies are adequately addressing the relevant threats unless the Committee investigates and understands those threats.

The Financial Services Committee is investigating whether financial institutions, including Deutsche Bank and Capital One, have complied with the Bank Secrecy Act and engaged in sound lending practices. The Intelligence Committee is investigating foreign influence on the U.S. political process, whether foreign actors have financial leverage over Mr. Trump, and the related national security implications. The results of these investigations will inform Congress's consideration of legislation. The fact that the same underlying conduct by the banks or by Mr. Trump might be unlawful does not invalidate the investigations. *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) ("[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed." (citation omitted)); *McGrain*, 273 U.S. at 179-80 ("Nor

do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on [the Attorney General's] part.").

Mr. Trump quotes (Br. 11, 32, 36) *Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968), for the proposition that Congress cannot engage in a law enforcement investigation based on "the mere assertion of a need to consider 'remedial legislation.'" But Mr. Trump's brief misleadingly omits the rest of the quoted sentence in *Shelton*, which applies here: "but when the purpose asserted is supported by references to specific problems which in the past have been or which in the future could be the subjects of appropriate legislation, then we cannot say that a committee of the Congress exceeds its broad power when it seeks information in such areas." *Id.*

Mr. Trump's reliance (Br. 32, 36) on the district court's decision in *United States v. Icardi*, 140 F. Supp. 383 (D.D.C. 1956), fares no better. The court found that Mr. Icardi was being prosecuted for perjury before a Congressional subcommittee at a time when the subcommittee was investigating a crime and was "functioning . . . as a committing magistrate" to adjudicate "the guilt or innocence" of Mr. Icardi. *Id.* at 387. The court held that, while Congress "has the right to inquire whether there is a likelihood that a crime has been committed touching upon a field within its general jurisdiction . . . this authority cannot be extended to sanction a legislative trial and conviction of the individual toward whom the evidence points the finger of

suspicion." *Id.* at 388. There is no respect in which the Committees' investigations here are the equivalent of a criminal trial.[23]

Mr. Trump further argues (Br. 33) that the Financial Services Committee's use of Mr. Trump as a case study for an industry-wide investigation into banking practices means that the Committee is impermissibly engaged in law enforcement. But "the public record"—including Mr. Trump's long banking history with Deutsche Bank, his significant loans with the bank, the bank's reported involvement in money laundering, the fact that other financial institutions refused to deal with him, and the reports that Mr. Trump's properties were purchased with illicit funds—"establishes that [Mr. Trump, his family, and his entities] serve as a useful case study for the broader problems being examined by the committee." JA133.

Finally, to the extent Mr. Trump urges (Br. 36) this Court to hold that any legislation contemplated by the Intelligence Committee would exceed "Congress's constitutional authority," that position is wrong. It is not the Court's role to determine the constitutionality of any and all legislation—whether currently proposed

[23] Mr. Trump misleadingly quotes the district court transcript to suggest—incorrectly—that the House's General Counsel represented that "the Capital One subpoena was framed like the *criminal* subpoenas he used 'when [he] was at the Justice Department.'" Br. 31 (emphasis and brackets in original) (quoting JA99, JA101). This statement in Mr. Trump's brief is wrong because the matter referred to by the General Counsel discussed at JA101 of the transcript was not a criminal case, and counsel nowhere stated that the Capital One subpoena was like a criminal subpoena. Although the clear error in the brief was explained to Mr. Trump's counsel, he declined a professional courtesy offer to timely correct it.

or just a future possibility—that the House might consider in connection with the Intelligence Committee's investigations. Whatever Mr. Trump's disagreements with Committee legislative proposals, this suit is not the proper forum to adjudicate them.

B. The Right To Financial Privacy Act Does Not Apply To Congress

Mr. Trump argues (Br. 37-45) that whether RFPA applies to Congress presents a serious question, but the text of RFPA, the statutory context, and its legislative history leave no doubt that Congressional requests for information are not governed by RFPA.

RFPA prohibits a financial institution's disclosure of customer financial records "to any Government authority . . . except in accordance with the provisions of this chapter." 12 U.S.C. § 3403(a); *see also id.* § 3403(b). RFPA specifies that "no Government authority" may obtain a customer's financial records from a financial institution, unless the customer authorizes the disclosure, or the disclosure is in response to a subpoena, search warrant, or formal written request and complies with additional statutory requirements. *Id.* § 3402(1)-(5); *id.* §§ 3404-3408.

RFPA's disclosure restrictions thus apply when the "financial records of any customer" are sought by a "Government authority." The term "Government authority" is defined by the statute to mean "any agency or department of the United States, or any officer, employee, or agent thereof." 12 U.S.C. § 3401(3). As the district court correctly held (JA124-25), "Government authority" does not include Congress.

Even if Mr. Trump were correct that RFPA applies to Congress—which he is not—he does not dispute that it would be of limited utility here because it applies at most to only a few plaintiffs and only with respect to their financial records, not the banks' internal records. RFPA applies to the "financial records of any customer." 12 U.S.C. § 3402. RFPA defines "customer" to mean a "person or authorized representative of that person," and defines "person" to mean "an individual or a partnership of five or fewer individuals." *Id.* § 3401(4) & (5). Because they are not "customers," plaintiff corporations, limited liability companies, and a trust (JA15-16) lack any rights under RFPA. *See United States v. Daccarett*, 6 F.3d 37, 51 (2d Cir. 1993), *superseded on other grounds by statute as recognized by United States v. Sum of $185,336.07 Currency Seized from Citizen's Bank Account L7N01967*, 731 F.3d 189, 196 (2d Cir. 2013).

Congress enacted RFPA in response to the Supreme Court's decision in *United States v. Miller*, 425 U.S. 435, 440 (1976), which held that a bank customer had no Fourth Amendment right to prevent a bank from disclosing his financial records in response to grand jury subpoenas. *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745 n.15 (1984). RFPA was "designed 'to strike a balance between customers' right of privacy and the need of law enforcement agencies to obtain financial records pursuant to legitimate investigations." *Id.* at 746 (quoting H. Rep. No. 95-1383, at 33 (1978)). "The most salient feature of [RFPA] is the narrow scope of the entitlements it creates. Thus, it carefully limits the kinds of customers to whom it applies . . . and the types of records they may seek to protect[.]" *Id.* at 745.

Multiple provisions of the statute underscore that Congress intended "Government authority"—defined as "any agency or department of the United States"—to mean an *Executive Branch* agency or department. The statute provides several mechanisms for a "Government authority" to obtain financial records, but "only if" the records are sought for a "legitimate law enforcement inquiry." 12 U.S.C. § 3405(1) (administrative subpoena and summons); *id.* § 3407(1) (judicial subpoena); *id.* § 3408(3) (formal written request); *see also id.* § 3406(a) (permitting disclosure to a "Government authority" only with "a search warrant pursuant to the Federal Rules of Criminal Procedure"). As Mr. Trump argues, Congress may not engage in law enforcement activities or issue a criminal subpoena. It would make no sense for Congress to have included itself as an "agency or department" generally prohibited from obtaining customer financial documents, but not to have a disclosure exception for *Congressional* subpoenas.

RFPA's other uses of the phrase "agency or department" underscore that the term refers to Executive Branch entities. For example, Section 3408 permits a Government authority to request financial records only if, among other requirements, "the request is authorized by regulations promulgated by the head of *the agency or department*." 12 U.S.C. § 3408(2) (emphasis added). Congress does not promulgate regulations, nor does Congress have a "head of . . . department." *See Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 886 (1991) ("The term head of a department means . . . the Secretary in charge of a great division of the executive

branch of the government, like the State, Treasury, and War, who is a member of the Cabinet." (ellipsis in original) (quoting *Burnap v. United States*, 252 U.S. 512, 515 (1920)).

In addition, RFPA provides for an array of civil penalties for "[a]ny agency or department of the United States or financial institution" that violates its requirements, including punitive damages for willful or intentional violations. 12 U.S.C. § 3417(a). Under Mr. Trump's reading of "any agency or department," Congress silently subjected itself to punitive damages and other monetary liability—a reading of the statute that is particularly implausible given Congress's absolute immunity under the Speech or Debate Clause.

Moreover, Section 3417(b) tasks the Office of Personnel Management (OPM) with determining whether "disciplinary action is warranted against the agent or employee" of "any agency or department" found to have violated RFPA. 12 U.S.C. § 3417(b). OPM is "the lead personnel agency for civilian employees *in the executive branch*," *United States Dep't of Air Force v. Fed. Labor Relations Auth.*, 952 F.2d 446, 448 (D.C. Cir. 1991) (emphasis added), and Congress would not have charged OPM with holding proceedings against Congressional staff.

RFPA's provisions governing the transfer of financial records between agencies or departments further confirm that Congress is not such an "agency or department." Section 3412(a) prohibits the transfer of records "to another agency or department" unless that agency or department certifies that the records may be used in a legitimate

law enforcement, intelligence, or international terrorism inquiry. 12 U.S.C. § 3412(a). Section 3412(b) requires notice to the customer when financial records are transferred pursuant to subsection (a). These provisions thus make clear that the same requirements that apply when an agency or department obtains information from a financial institution directly also govern when the information is obtained from another agency or department. Congress emphasized, however, that these transfer provisions—like RFPA's other requirements—did not apply to Congress: "Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress." 12 U.S.C. § 3412(d).[24]

The legislative history makes even more clear that Congress did not intend RFPA's restrictions to govern Congress. The Department of Justice (DOJ) proposed a bill with the definition of "government authority" that Mr. Trump now advances in litigation. But Congress did *not* adopt that proposal.

The DOJ bill would have "extend[ed] these important procedures and privacy rights to cover investigations by the *Legislative* as well as the Executive Branch."

---

[24] Mr. Trump argues (Br. 42-43) that Congress must be a "Government authority" covered by RFPA because Section 3413(j) provides that RFPA does not apply when records are sought by the Government Accountability Office (GAO). In Mr. Trump's view, this exception would not be necessary unless Congress were included because GAO is a legislative agency. But Section 3413(j) differentiates GAO from "a government authority" and thus supports the opposite conclusion: GAO may obtain financial records in its proceedings or investigations that are "*directed at* a government authority." 12 U.S.C. § 3413(j) (emphasis added).

Electronic Funds Transfer and Financial Privacy: Hearings on S. 2096, S. 2293 and S. 1460 Before the Subcomm. on Fin. Insts. of the Senate Comm. on Banking, Housing and Urban Affairs, 95th Cong. 194 (1978) (emphasis added). The proposal would have defined "government authority" to mean "*the Congress of the United States*, or any agency or department of the United States or of a State or political subdivision, or any officer, employee or agent of any of the foregoing." *Id.* at 397 (emphasis added); *see id.* at 161 (Congressional Research Service report noting that the DOJ bill—unlike two Senate bills—protects "against unauthorized access *by Congress*" (emphasis added)). Thus, the Executive understood that Congress would not be included in the term "agency or department" because it proposed separately adding "Congress of the United States." Congress, in the end, focused instead on limiting agencies'—not Congress's—access to customer financial records, with exceptions for law enforcement activities. *See* H. Rep. No. 95-1383, at 6 (RFPA would "[g]ive[] individuals notice of, and a chance to challenge, *Federal Government agency requests* for their bank records" (emphasis added)); *id.* at 33 (RFPA is "intended to protect the customers of financial institutions from unwarranted intrusion into their records while at the same time permitting *legitimate law enforcement activity*" (emphasis added)).

Against the statutory text, context, and history, Mr. Trump principally relies (Br. 41-43) on the Supreme Court's now overruled decision in *United States v. Bramblett*, 348 U.S. 503, 504 n.1, 509 (1955), which had interpreted the term "any department or agency of the United States" to include Congress. Mr. Trump contends that, because

Congress was legislating against the backdrop of *Bramblett*, the "agency or department" in RFPA must have the same meaning. But that general principle cannot overcome the specific text of RFPA, particularly because the Supreme Court has since stressed that *Bramblett* was "a seriously flawed decision" that "made no attempt to reconcile its interpretation with the usual meaning of 'department.'" *Hubbard v. United States*, 514 U.S. 695, 702 (1995).

In *Hubbard*, the Supreme Court overruled *Bramblett* to hold that "department or agency of the United States"—as used in 18 U.S.C. § 1001—refers *only* to Executive Branch entities, explaining that "while we have occasionally spoken of the three branches of our Government, including the Judiciary, as 'department[s],' that locution is not an ordinary one[,]" and "[f]ar more common is the use of 'department' to refer to a component of the Executive Branch." 514 U.S. at 699 (citation omitted). The district court correctly held that *Hubbard*'s reasoning is "controlling here." JA124.

As the district court concluded, "the structure and context of the RFPA makes clear that Congress did not believe it was binding itself to the RFPA. More on this point need not be said. Congress is not bound by the RFPA." JA125.

II. THE BALANCE OF EQUITIES DOES NOT FAVOR A PRELIMINARY INJUNCTION

Mr. Trump is not entitled to a preliminary injunction because his constitutional and statutory claims fail on the merits—and, at a minimum, do not present "serious questions" or demonstrate a likelihood of success. This Court can affirm the district

court's denial of a preliminary injunction on that basis alone. But Mr. Trump has also failed to demonstrate that the district court clearly erred in finding that "the balance of equities and hardships, along with the public interest, favor a preliminary injunction." JA151; *Chemical Bank v. Haseotes*, 13 F.3d 569, 573 (2d Cir. 1994) (reviewing balance of hardships finding for clear error).

To the extent Mr. Trump's balance-of-the-hardships argument presupposes that the Committees' investigations are unlawful (Br. 49-51), those arguments fail for the reasons discussed above. Regardless, any harm that Mr. Trump would suffer from disclosure of the documents to Congress is outweighed by the significant harm to the Committees and the public from delaying production of these documents. As the Supreme Court cautioned in *Eastland*, when it overturned the D.C. Circuit's decision enjoining a Congressional investigation, that "case illustrates vividly the harm that judicial interference may cause" where a valid "legislative inquiry has been frustrated for nearly five years." 421 U.S. at 511. Mr. Trump seeks to do exactly that: frustrate the Committees' legitimate legislative inquiries for as long as possible.

The Committees' interest in prompt compliance with their subpoenas is paramount. Congress's "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain*, 273 U.S. at 174. Mr. Trump's argument (Br. 48) that the Committees have only "vaguely claimed that they need the documents right away" is not only wrong—given the pressing nature of the investigations—it is also an improper usurpation of Congress's constitutional power

to investigate and conduct oversight. The Committees' interest in obtaining relevant information necessary to ongoing investigations would be severely harmed by any injunctive relief in this case.

Mr. Trump also incorrectly argues (Br. 48) that the expiration of the 116th Congress cannot justify prompt enforcement of the subpoenas. Mr. Trump relies on *Committee on Judiciary of the U.S. House of Representatives v. Miers*, 542 F.3d 909 (D.C. Cir. 2008), but the D.C. Circuit there issued its decision fewer than four months before that Congress expired and correctly recognized on those specific facts that, "even if expedited, this controversy will not be fully and finally resolved by the Judicial Branch . . . before the 110th Congress ends." *Id.* at 911. Mr. Trump's reliance on *United States v. AT&T*, 567 F.2d 121, 133 (D.C. Cir. 1977), is also misplaced. In that case, the D.C. Circuit found that a "modest" delay in Congress obtaining documents would be acceptable, but in the context of a document production negotiated between the Executive and Legislative Branches. *Id.* These cases do not undermine the district court's recognition here that the House is not a "continuing body," and any delay may result in irreparable harm to these Committees. JA152 (quoting *Eastland*, 421 U.S. at 512).

Finally, the district court correctly recognized the "clear public interest in maximizing the effectiveness of the investigatory powers of Congress." JA153 (citing *Exxon Corp.*, 589 F.2d at 594 ("the investigatory power is one that the courts have long perceived as essential to the successful discharge of the legislative responsibilities

of Congress")). Mr. Trump's contrary argument ignores the clear and compelling public interest in expeditious and unimpeded Congressional investigations into core aspects of the financial system and national security that touch every member of the public. Mr. Trump provides no legitimate reason why the public would be served by delaying the Committees from obtaining the records necessary to carry out their constitutional oversight and legislative duties.

CONCLUSION

For the foregoing reasons, the Court should expeditiously affirm the district court's order denying Mr. Trump's request for a preliminary injunction.

Respectfully submitted,

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July 11, 2019

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Circuit Rule 32.1(a)(4)(A) because this brief contains 13,995 words excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Professional Plus 2016 in 14-point Garamond type.

/s/ Douglas N. Letter
Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on July 11, 2019, I filed a copy of the foregoing Brief for the Committee on Financial Services and the Permanent Select Committee on Intelligence of the U.S. House of Representatives via the CM/ECF system of the United States Court of Appeals for the Second Circuit, which I understand caused service on all registered parties.

/s/ Douglas N. Letter
Douglas N. Letter

ADDENDUM

ADDENDUM TABLE OF CONTENTS

* The House Rules are available at https://tinyurl.com/HouseRules116thCong, the Financial Services Committee's Rules are available at https://tinyurl.com/CommFinServsRules, and the Intelligence Committee's Rules are available at https://tinyurl.com/HPSCIRules.

Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*

12 U.S.C. § 3401 (excerpts)

Definitions

For the purpose of this chapter, the term—

* * *

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

* * *

(7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) the Bureau of Consumer Financial Protection;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act (Public Law 91-508, Title I) and subchapter II of chapter 53 of Title 31; or

(I) any State banking or securities department or agency[.]

12 U.S.C. § 3402

Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 3404 of this title;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 3405 of this title;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 3407 of this title; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

12 U.S.C. § 3403 (excerpts)

Confidentiality of financial records.

(a) Release of records by financial institutions prohibited

No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

(b) Release of records upon certification of compliance with chapter

A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

* * *

12 U.S.C. § 3405 (excerpts)

Administrative subpena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry[.]

* * *

12 U.S.C. § 3406 (excerpts)

Search warrants

(a) Applicability of Federal Rules of Criminal Procedure

A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

* * *

12 U.S.C. § 3407 (excerpts)

Judicial subpena

A Government authority may obtain financial records under section 3402(4) of this title pursuant to judicial subpena only if—

> (1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry[.]

* * *

12 U.S.C. § 3408 (excerpts)

Formal written request

A Government authority may request financial records under section 3402(5) of this title pursuant to a formal written request only if—

> (1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;
>
> (2) the request is authorized by regulations promulgated by the head of the agency or department;
>
> (3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and
>
> (4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry[.]

* * *

12 U.S.C. § 3412 (excerpts)

Use of information

* * *

(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information

Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this chapter prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

* * *

12 U.S.C. § 3417 (excerpts)

Civil penalties

(a) Liability of agencies or departments of United States or financial institutions

Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this chapter is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency

Whenever the court determines that any agency or department of the United States has violated any provision of this chapter and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Director of the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Director after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Director recommends.

* * *

RULES OF THE U.S. HOUSE OF REPRESENTATIVES, ONE HUNDRED SIXTEENTH CONGRESS

House Rule X (excerpts)
ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

* * *

(n) **Committee on Financial Services**

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

* * *

General Oversight Responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b) (1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

* * *

(d) (1) Not later than March 1 of the first session of a Congress, the chair of each standing committee (other than the Committee on Appropriations, the Committee on Ethics, and the Committee on Rules) shall—

(A) prepare, in consultation with the ranking minority member, an oversight plan for that Congress;

(B) provide a copy of that plan to each member of the committee for at least seven calendar days before its submission; and

(C) submit that plan (including any supplemental, minority, additional, or dissenting views submitted by a member of the committee) simultaneously to the Committee on Oversight and Reform and the Committee on House Administration.

(2) In developing the plan, the chair of each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in the plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in the plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within the committee's jurisdiction are subject to review every 10 years; and

(E) have a view toward insuring against duplication of Federal programs.

(3) Not later than April 15 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the

Committee on Oversight and Reform shall report to the House the oversight plans submitted under subparagraph (1) together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

* * *

Special oversight functions

3. (m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities de- scribed in clause 11(b)(1)(A).

* * *

Permanent Select Committee on Intelligence

11.(a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee").

* * *

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in sec- tion 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence- related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chair of the select committee.

* * *

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

* * *

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of

such person. Nothing herein shall be construed to pre- vent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1)The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A)the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B)a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

* * *

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad

whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

* * *

House Rule XI (excerpts)
PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

* * *

Power to sit and act; subpoena power

2. (m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph 3(A)) –

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records,

correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3) (A) (i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

RULES OF THE COMMITTEE ON FINANCIAL SERVICES
116TH CONGRESS

Rule 3 — Subpoenas and Oaths

(e)(1) The power to authorize and issue subpoenas is delegated to the Chair. Unless there are exigent circumstances, the Chair will provide written notice to the ranking minority member at least 48 hours in advance of the authorization and issuance of a subpoena, and such notice shall include a full copy of the proposed subpoena, including any proposed document schedule.

(2) Authorized subpoenas shall be signed by the Chair or by any member designated by the Committee and may be served by any person designated by the Chair or such member.

(3) The Chair, or any member of the Committee designated by the Chair, may administer oaths to witnesses before the Committee.

RULES OF PROCEDURE
FOR THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES HOUSE OF REPRESENTATIVES
116TH CONGRESS

10. SUBPOENAS

(a) Generally. All subpoenas shall be authorized by the Chair of the full Committee, upon consultation with the Ranking Minority Member, or by vote of the full Committee.

(b) Subpoena Contents. Any subpoena authorized by the Chair of the full Committee or by the full Committee may compel:

(1) The attendance of witnesses and testimony before the Committee; or

(2) The production of memoranda, documents, records, or any other tangible item.

(c) Signing of Subpoena. A subpoena authorized by the Chair of the full Committee or by the full Committee may be signed by the Chair or by any member of the Committee designated to do so by the full Committee.

(d) Subpoena Service. A subpoena authorized by the Chair of the full Committee, or by the full Committee, may be served by any person designated to do so by the Chair.

(e) Other Requirements. Each subpoena shall have attached thereto a copy of these rules.